

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ROBERT L. LEWIS and MARY C. LEWIS,

Plaintiffs,

v.

**STATE OF KANSAS and KANSAS STATE
BANK COMMISSIONER OFFICE,**

Defendants.

CIVIL ACTION

No. 04-2366-CM

MEMORANDUM AND ORDER

This matter comes before the court on plaintiffs' Demand for Court Clerk, Magistrate, and Judge's Review on Case Judgments (Doc. 39) and plaintiffs' Motion for Emergency Reconsideration (Doc. 40).

Plaintiffs have requested that the court reconsider its May 24, 2005 Memorandum and Order dismissing this case. Plaintiffs previously filed a motion to reconsider the May 2005 dismissal, which this court denied in November 2005.

Plaintiffs' current motions again request the court's review of the case pursuant to Fed. R. Civ. P. 60(b). However, Rule 60(b) specifies that a motion pursuant to this rule "shall be made within a reasonable time." Considering the timing of filing, six months after the court entered its order denying plaintiffs' previous motion to reconsider, and nearly a year after the court entered its order dismissing this case, the court finds plaintiffs' current motions for reconsideration untimely. Plaintiffs contend that they did not receive "timely" notice of the court's November 2005 Memorandum and Order denying their first motion to reconsider, but plaintiffs give the court no indication of when they actually received the November 2005 Memorandum and

Order. Even if the court were to consider plaintiffs' current motions as timely, the court finds no basis upon which to grant plaintiffs' Rule 60(b) request.

Rule 60 provides that "[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b) (emphasis added). A district court has discretion to grant relief as justice requires under Rule 60(b). *Servants of Paraclete v. Does*, 204 F.3d 1005, 1009 (10th Cir. 2000). However, such relief is considered "extraordinary" and should "only be granted in exceptional circumstances." *Id.* "A litigant shows exceptional circumstances by satisfying one or more of Rule 60(b)'s six grounds." *Van Skiver v. United States*, 952 F.2d 1241, 1243-44 (10th Cir. 1991); *Loum v. Houston's Rest., Inc.*, 177 F.R.D. 670, 671-72 (D. Kan. 1998). The court may not grant a Rule 60 motion where no basis for relief is provided. *See Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 580 (10th Cir. 1996) (noting that granting a Rule 60 motion without a basis for relief would be an abuse of the court's discretion).

A Rule 60(b) motion triggers consideration of the established policy in favor of final judgments. *United States v. Johnson*, 934 F. Supp. 383, 385 (D. Kan. 1996). "Not a substitute for a direct appeal, a rule 60(b) motion addresses matters outside the issues on which the judgment was entered." *Nutter v. Wefald*, 885 F. Supp. 1445, 1450 (D. Kan. 1995) (citing *Brown v. McCormick*, 608 F.2d 410, 413 (10th Cir. 1979)). "It is not the opportunity for the court to revisit the issues already addressed in the underlying order or to consider arguments and facts that were available for presentation in the underlying proceedings." *Nutter*, 885 F. Supp. at 1450 (citing *Van Skiver*, 952 F.2d at 1243).

In considering plaintiffs' previous motion to reconsider, this court reiterated its prior holding that it lacks jurisdiction over plaintiffs' claims.¹ While the court appreciates the difficult position in which plaintiffs find themselves, and remains sympathetic to plaintiffs' situation, the fact remains that the court has found no basis upon which it may exercise jurisdiction over plaintiffs' claims. Plaintiffs' most recent filings raise no new facts, issues or law that would change the court's determination of this issue.

In fact, plaintiffs' next procedural course of action after the court denied their previous motion to reconsider was an appeal to the Tenth Circuit Court of Appeals. Although the court is inclined to treat plaintiffs' current motions as motions for leave to appeal this court's May 2005 and November 2005 Memorandum and Orders, the court is unable to determine whether plaintiffs' motions were timely under Fed. R. App. P. 4. The court is further unable to determine whether plaintiffs were entitled to an extension of time under Fed. R. App. P. 4, if in fact plaintiffs did not receive prompt notice of the court's November 2005 Memorandum and Order, because plaintiffs have provided the court no information regarding the exact date upon which they received the court's November 2005 Memorandum and Order. Accordingly, the court denies both of plaintiffs' motions.

IT IS THEREFORE ORDERED that plaintiffs' Demand for Court Clerk, Magistrate, and Judge's Review on Case Judgments (Doc. 39), and plaintiffs' Motion for Emergency Reconsideration (Doc. 40) are hereby denied.

Dated this 13th day of July 2006, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge

¹ The court's analysis of the jurisdictional issues is fully set forth in the May 24, 2005 Memorandum and Order and thus is not repeated herein.